Lai King Lung v Perbadanan Pengurusan Anjung Hijau & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S-22NCVC-242 OF 2010
PRASAD ABRAHAM JC
25 APRIL 2011

Land Law — Strata title — Management corporation — Acts of — Whether management corporation had acted ultra vires — House rules — Validity of — Whether acts justified by house rules — Strata Title Act 1985 s 44 & Schedule 3

The plaintiff, the registered owner of an apartment unit in a condominium complex, alleged that the first defendant, the registered management corporation of the said condominium complex, had forcibly entered into his unit to remove the air-conditioned compressor that was located on the balcony of the plaintiff's unit. The plaintiff commenced an action against the first defendant and the second defendant, a committee member of the first defendant, for trespass, theft and damages arising from the forced entry onto the balcony of the plaintiff's unit. The first defendant contended that its actions were justified by the house rules, which governed the relationship between the plaintiff and the first defendant. It was the first defendant's defence that the house rules prohibited the plaintiff from placing an air-condition compressor outside its unit, ie on the balcony. However, the plaintiff submitted that the house rules were ultra vires the relevant provisions of the Strata Title Act 1985 ('the Act'). Both parties agreed that the main issue to be determined in the present case was the issue of law as to the validity of the house rules.

Held, allowing the plaintiff's claim against the first defendant only, with damages to be assessed and costs to be taxed:

(1) Since this matter was being disposed by issues of law, the issue of the second defendant being brought in as a party was deferred (see para 1).

(2) Whilst house rules were permissible, they had to follow or clarify by-laws passed by special resolution pursuant to s 44 of the Act and in compliance with Schedule 3 of the Act. In the present case, the house rules, which were essentially to regulate the use of common property and the façade of the condominium, were issued by the developer or vendor of the condominium complex and not by the first defendant. Thus, there was a clear violation of s 44(2) of the Act in that the house rules were not in place because of existing by-laws but had been in place before the issuance of strata titles. As such, they were ultra vires the Act (see paras 8 & 17).

[Bahasa Malaysia summary

Plaintif, pemilik berdaftar unit pangsapuri di kompleks kondominium, mendakwa bahawa defendan pertama, perbadanan pengurusan berdaftar kompleks kondominium tersebut, telah secara paksaan memasuki ke dalam unitnya untuk mengeluarkan kompresor penyaman udara yang terletak di bahagian beranda di unit plaintif tersebut. Plaintif memulakan tindakan terhadap defendan pertama dan defendan kedua, ahli jawatankuasa defendan pertama, untuk pencerobohan, pencurian dan ganti rugi yang berbangkit daripada kemasukan secara paksa ke beranda unit plaintif. Defendan pertama berhujah bahawa tindakannya berjustifikasi mengikut peraturan-peraturan kediaman tersebut, yang mengawal hubungan di antara plaintif dan defendan pertama. Ia adalah pembelaan defendan pertama bahawa peraturan-peraturan kediaman tersebut menghalang plaintif daripada meletakkan kompresor penyaman udara di luar unitnya iaitu di beranda. Walau bagaimanapun, plaintif berhujah bahawa peraturan-peraturan kediaman tersebut adalah ultra vires peruntukan-peruntukan relevan Akta Hakmilik Strata 1985 ('Akta'). Kedua-dua pihak bersetuju bahawa isu utama untuk ditentukan dalam kes ini adalah isu undang-undang terhadap kesahan peraturan-peraturan kediaman tersebut.

Diputuskan, membenarkan tuntutan plaintif terhadap defendan pertama saja, dengan ganti rugi ditaksirkan dan kos ditetapkan:

(1) Memandangkan perkara ini ditentukan melalui isu undang-undang, isu mengenai defendan kedua dibawa masuk sebagai satu pihak ditangguhkan (lihat perenggan 1).

(2) Walaupun peraturan-peraturan kediaman tersebut dibenarkan, ia mestilah mengikut atau dijelaskan oleh undang-undang kecil yang diluluskan oleh resolusi khas berikutan s 44 Akta dan mematuhi Jadual Ketiga Akta. Dalam kes ini, peraturan-peraturan kediaman tersebut, yang mana pada mulanya untuk mengawal penggunaan hartanah awam dan permukaan hadapan kondominium, dikeluarkan oleh pemaju atau penjual kompleks kondominium dan bukan oleh defendan pertama. Oleh itu pencabulan jelas s 44(2) Akta di mana peraturan-peraturan kediaman tersebut tidak dikeluarkan kerana kewujudan undang-undang kecil tetapi telah dikeluarkan sebelum pengeluaran hakmilik strata. Oleh itu, ia adalah ultra vires Akta (lihat perenggan 8 & 17).]

Notes

For cases on management corporation, see 8(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 5156–5174.

Cases referred to

Management Corp Strata Title Plan No 1378 v Chen Ee Yueh [1994] 1 SLR 463, HC (refd)

Paganetto v Management Corp Strata Title No 1075 [1988] 1 SLR 268, HC (folld)

Legislation referred to

Land Title (Strata) Act [SG] ss 31, 31(2)(e), 35(2), (4), Second Schedule, para 2

Strata Title Acts 1985 ss 44, 44(1), (2), First Schedule, para 10(2)(a), Third Schedule

Christopher Lai King Lung (Lee See Loon with him) (Chris Lai, Yap & Partners) for the plaintiff.

Pua Jing Yi (Ng Cheng Kiat with her) (Chur Associates) for the defendant.

Prasad Abraham JC:

[1] The first plaintiff is the registered unit holder of a apartment located at blok D-15-8, Anjung Hijau Apartments at No 8, Jalan 1/155B, 57000 Bukit Jalil, Kuala Lumpur ('the said unit'). The first defendant is the registered management corporation bearing certificate No 1631 being duly registered under the Strata Title Acts 1985 (Act 318). This is so as individual strata titles are available to the units. The court is unable to fathom why the second defendant was brought in as a party but taking to account this matter is being disposed by issues of law, this question of the second defendant being brought in as a party by merely being a committee member of the first defendant was deferred.

[2] The first plaintiff's complaints are found in paras 5–11 of the statement of claim. In essence, the plaintiff is alleging the first defendant through its servants and or agents forcibly entered into the first plaintiff's unit to remove the air-conditioned compressor of the first plaintiff unit which was located on the balcony of the first plaintiff's unit visible to the naked eye when looking at the facade of the units from the outside. The first plaintiff's claim against the first defendant is for trespass, theft and damages ensuing. The first plaintiff obtained an injunction from this court to order the first defendant to return the air-conditioned compressor and thereafter the first defendant entered an appearance, filed a defence and applied to have the injunction to be set aside. There were also applications filed for security for costs, and amendment. The crux of the first defendant's defence is that the house rules is the all encompassing rules that governs the relationship between the first plaintiff and the first defendant and under the said 'House Rules', the first plaintiff was prohibited from placing an air-conditioned compressor outside the unit on the balcony. It is the first defendant contention that their actions were authorised by the house rules. The first plaintiff however contends that the said house rules are ultra vires the relevant provisions of the Strata Title Act 1985.

[3] In the light of the fact, the issue between the parties was essentially an issue of law ie the validity or otherwise of the said house rules, the court suggested to both counsel that this matter could be disposed of by way of issues of law. Both learned counsel agreed with this suggestion and with their consent I proceeded to deal with the matter based on the agreed issues of law to be determined by this court. I heard oral submissions of both counsel and thereafter directed counsel to supplement their submissions with additional written submissions and on 30 March 2011 I delivered my decision and made the following orders ie:

(a) order in terms of the statement of claim of para 31(c) against the first defendant only;

(b) damages to be assessed by the Timbalan Pendaftar;

(c) costs to the plaintiff to be taxed by the SAR; and

(d) such further or other relief.

[4] In dealing with this matter, I am reminded of the oft quoted phrase 'a man's home is his castle'. However, when living in a unit along with the other unit holders in a condominium block, the castle, the moat and the grounds have to be shared. It therefore follows, there have to be rules and regulations to govern the relationship between different unit owners and the management corporation. Whilst it is true that an owner of a unit is entitled to furnish his property in any way he deems aesthetic, the principal of communitarian living within a condominium entails consideration of order and good taste for the common good (see the case *Management Corp Strata Title Plan No 1378 v Chen Ee Yueh*).

[5] In our present case, the first defendant relied on the house rules to justify its actions which require the air-cond compressor to be placed within the unit. The house rules are found in encl 26 exh FYL13. It is clear that this house rules were effective 1 July 1988 (well before the first defendant was incorporated) and were issued by the developer ie the vendor (see the definition of management in the house rules). These rules were essentially to regulate the use of common property and the facade of the condominium. Since the Strata Title Act is applicable here as the first defendant has been incorporated, reference is now made to s 44 of Strata Title Act and the particular s 44(1) and (2) which I have set out below:

(1) The by-laws set out in the Third Schedule shall, as and from the opening of a book of the strata register be in force for all purposes in relation to every subdivided building or land and shall not be amended by the management corporation.

(2) The management corporation may by special resolution make additional by-laws, or make amendments to such additional by-laws, not inconsistent with the by-laws set out in the Third Scheduled, for regulating the control, management, administration, use and enjoyment of the subdivided building or land.

[6] I also made reference to the Third Schedule of the Act headed (*BY-LAWS FOR THE REGULATION OF SUBDIVIDED BUILDINGS*). The by-laws passed must not infringe the Third Schedule to the Strata Title Act.

[7] In my judgment, the first defendant when incorporated *must pass by way of special resolution the by-laws*.

[8] However if the first defendant was required for every rule to be laid down and made by way of by-laws this would cause practical problems which would disrupt harmonious condominium living. Only those rules that are not likely to be altered from time to time should be made as by-laws. However for instance the timing for the usage of sports recreational facilities, a restaurant if any could be implemented through the use of house rules. It is therefore my judgment that whilst house rules are permissible, they must follow and/or clarify or particularise by-laws passed by special resolution pursuant to s 44 of Strata Title Act and in compliance with Schedule 3 of the said Act. In our case, these house rules are not in place because of existing by-laws but have been in place before the issuance of strata titles and therefore on that basis alone they are ultra vires the Strata Title Act.

[9] I make reference to the decision of the High Court of Singapore in *Paganetto v Management Corp Strata Title No 1075* [1988] 1 SLR 268 where it was held by (Chao Hick Tin JC (as he then was):

(1) On the facts, it was clear that the management corporation had not in any way discharged its duties or exercised its powers unreasonably.

(2) It was also clear from ss 35(2) and 35(4) that the bye-laws 'shall' be paramount. However, there was nothing in s 35(4) which suggested that every additional rule, no matter how trivial, made by the management corporation for the orderly enjoyment of common property in the condominium must be made by way of bye-laws. The discretion rested with the management corporation. *To say that every rule lay down by the management corporation had to be made by way of bye-laws would cause so much practical difficulties that it may undermine the very basis of condominium living. There must be flexibility in regard to these matters. It was plain good sense that only those rules which were important and which are not likely to be altered from time to time should be made as bye-laws. It was totally unreasonable to suggest that the management corporation, in exercise of its functions and duties laid down in the Act, may not make rules for the day to day running of the common facilities of the condominium.*

[10] And I quote further the judgment of His Lordship at p 3 of his judgment:

> the argument advanced by the plaintiff is that the management corporation may not make the house rules and enforce them against him without first going through the procedure of making them as bye-laws under s 35(4) of the Act. It would be useful if I should set out in full the relevant provisions of s 35:
>
> (1) Every subdivided building shown in a strata title plan shall be regulated by by-laws which shall provide for the control, management, administration, use and enjoyment of the lots and the common property.
>
> (2) The by-laws shall include the by-laws set out in the Second Schedule which shall not be added to, amended or repealed by the management corporation.
>
> (3) The by-laws set out in the Second Schedule shall, as and from the registration of a strata title plan, be in force for all purposes in relation to every subdivided building.
>
> (4) The management corporation may by special resolution make by-laws, not inconsistent with the by-laws set out in the Second Schedule, for regulating the control, management, administration, use and enjoyment of the subdivided building.
>
> (5) The by-laws for the time being in force in respect of the subdivided building shall bind the management corporation and the subsidiary proprietors to the same extent as if they constituted properly executed agreements —
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> (a) on the part of the management corporation with the subsidiary proprietors; and
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> (b) on the part of each subsidiary proprietor with every other subsidiary proprietor and with the management corporation, to observe and perform all the provisions of the by-laws.
>
> (12) Every occupier of a lot who commits a breach of any of the by-laws in the Second Schedule or makes default in complying with the provisions of the by-laws, and every subsidiary proprietor who is knowingly a party to the breach or default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000.

[11] It is clear from ss 35(2) and (4) quoted above that the by-laws set out in the Second Schedule shall be paramount. All subsidiary proprietors are bound by those provisions. Indeed, a breach, if any, of the by-laws is an offence. The management corporation may only make additional by-laws which are not inconsistent with the by-laws set out in the Second Schedule. But there is nothing in s 35(4) which suggests that every additional rule, no matter how trivial, made by the management corporation for the orderly enjoyment of common property in the condominium must be made by way of by-laws. The discretion rests with the management corporation.

[12] It is abundantly clear that under para 3 of the Second Schedule, the management corporation has a duty to control, manage and administer all the common property for the benefit of all the subsidiary proprietors. Under s 31(2)(e), the management corporation is given the power to do all things reasonably necessary for the enforcement of the by-laws set out in the Second Schedule. It must therefore follow that it is entitled to make house rules for those purposes. The fact that it could have made some of the house rules as by-laws does not mean that it may not make house rules just as house rules. Section 35(4) talks of 'may'. Many of those things dealt with in the house rules are really matters of details and procedures, which may need to be altered from time to time in the light of experience gained to ensure an orderly enjoyment by all subsidiary proprietors of common property. It is absurd to suggest that for every addition or amendment to the house rules, no matter how insignificant, the management corporation has to call a general meeting to effect a special resolution pursuant to s 35(4) of the Act. And until the by-laws are made or amended, nothing can be done about the problems faced by the condominium. This will be the result of the plaintiff's argument which I reject. It is totally unreasonable to suggest that the management corporation, in exercise of its functions and duties laid down in the Act, may not make rules for the day-to-day running of the common facilities of the condominium. The house rules are needed to avoid conflicts which could easily arise.

[13] As an illustration of the untenability of the argument of the plaintiff, I would refer to the proviso to para 3 of the Second Schedule. That proviso states: 'Provided that the corporation may by agreement with a particular proprietor grant him the exclusive use and enjoyment of part of the common property or special privileges in respect of the common property or part of it'. Following from this proviso, it means that the management corporation could allocate a specific common property for the exclusive use of a proprietor. That will also mean that other subsidiary proprietors will be denied the use of that specific common property. And if house rules are made to implement that agreement, does it therefore follow that those particular house rules forbidding other subsidiary proprietors from using that specific common property is therefore ultra vires and void unless they are first made as by-laws?

[14] In my opinion, there cannot be any doubt that para 3 of the Second Schedule, read with s 31, gives authority to the management corporation to lay down all the detailed rules needed to ensure that the condominium is managed efficiently and that the common facilities are properly used and enjoyed fairly by all.

[15] The house rules are for the good of all the subsidiary proprietors/occupiers. To say that every rule laid down by the management corporation has to be made by way of by-laws would cause so much practical difficulties that it may undermine the very basis of condominium living. There must be flexibility in regard to these matters. It is plain good sense that only those rules which are important and which are not likely to be altered from time to time should be made as by-laws. After all, the management corporation is constituted not by anybody else but by the subsidiary proprietors themselves. If the council has not acted fairly or properly, an extraordinary general meeting can always be called by subsidiary proprietors pursuant to para 10(2)(a) of the First Schedule to the Act.

[16] I am in agreement with the views expressed by His Lordship and I adopt the same in my judgment. It is to be observed the relevant provisions of the Strata Titles Act in Singapore is similar to ours.

[17] It is also to be noted that the house rules in question have not been issued by the first defendant but by the developer (referred to as the vendor) (see encl 26 exh FYL13). This is also clearly a violation of s 44(2) which requires the first defendant to make additional by-laws. Therefore, the present set of house rules are at in any rate ultra vires the Strata Titles Act. It is suggested that the first defendant take immediate steps by way of special resolution to adopt as by laws these house rules and thereafter the first defendant would be in a position to issue house rules in respect of matters arising out of these by laws.

[18] It is for these aforesaid reasons that the court made the orders that it did.

[19] As a post script to these proceedings, the court wishes to record its appreciation to all counsel appearing before it in this case for their submissions and authorities and research undertaken by them in this fairly new area of law.

Plaintiff's claim allowed against first defendant only, with damages to be assessed and costs to be taxed.

Reported by Kohila Nesan